

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3
4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,)
7)
8) No. 13-10048-FDS
9 vs.)
10)
11 KING BELIN,)
12 Defendant.)

13
14
15 BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

16
17
18 FINAL PRETRIAL CONFERENCE

19
20
21 John Joseph Moakley United States Courthouse
22 Courtroom No. 2
23 One Courthouse Way
24 Boston, MA 02210

25
December 18, 2014
4:10 p.m.

Valerie A. O'Hara
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 3204
Boston, MA 02210
E-mail: vaohara@gmail.com

1 APPEARANCES:

2 For The United States:

3 United States Attorney's Office, by JOHN A. WORTMANN, JR.,
4 ESQ., 1 Courthouse Way, Suite 9200, Boston, Massachusetts
02110;

5 For the Defendant:

6 PAUL J. GARRITY, ESQ., 14 Londonderry Road,
7 Londonderry, New Hampshire 03053.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 PROCEEDINGS

2 THE CLERK: All rise. Thank you. Please be seated.
3 Court is now in session in the matter of United States vs.
4 King Belin, Criminal Matter Number 13-10048.

5 Counsel, would you please identify yourself for the
6 record.

7 MR. WORTMANN: Your Honor, good afternoon, your Honor,
8 John Wortmann for the United States.

9 MR. GARRITY: Good afternoon, your Honor, Paul Garrity
04:10PM 10 for Mr. Belin.

11 THE COURT: Good afternoon. Mr. Belin is present.
12 This is I guess we'll call it the final final pretrial
13 conference in this case. We are on track to impanel on Monday
14 depending on what, if anything, happens with regard to the
15 issue of counsel, I think. Why don't we start with that. I
16 have read the memorandum filed by Mr. Garrity. The government
17 has also filed a motion in limine.

18 Mr. Garrity, how do you want to proceed?

19 MR. GARRITY: Judge, I think it would make sense maybe
04:11PM 20 to address the status of counsel issue first.

21 THE COURT: Okay.

22 MR. WORTMANN: Do you want me to leave, your Honor?

23 THE COURT: All right. We'll do it ex parte, and I'll
24 seal that portion of the transcript pending Court Order.

25 MR. GARRITY: Thank you.

1 (SEALED TRANSCRIPT WAS HELD)

2 THE COURT: All right. Mr. Wortmann is back in the
3 courtroom. Without getting into the details, I heard from
4 Mr. Garrity and Mr. Belin, as a result of which I put Mr. Belin
5 on the stand, put him under oath and had a colloquy with him in
6 which in substance I had him waive what would otherwise be his
7 Sixth Amendment right to certain factual defenses. Mr. Garrity
8 corrected that he didn't have to prove any factual defenses,
9 and so I recast it as suggesting reasonable doubt through
05:08PM 10 certain factual lines of inquiry and argument.

11 I made a finding that he had waived those issues
12 knowingly and voluntarily, but I am reserving final decision on
13 the issue until tomorrow because there's one other -- there's
14 something I want to think about, but I don't expect to reverse
15 myself, I expect to go down this path and to impanel on Monday
16 as scheduled.

17 I think what makes sense is for us to set up a brief
18 conference even by telephone tomorrow. If I do reverse field,
19 we'll bring Mr. Belin back in but I don't think we need him if
05:09PM 20 I'm just going to affirm what I've decided to do.

21 MR. GARRITY: If it's convenient for the Court, I've
22 got to be here tomorrow at 11:00 for a sentencing.

23 MR. WORTMANN: Unfortunately, your Honor, I have a
24 suppression hearing starting at 9:00, which I think is going to
25 take a good portion of the day. It may go past lunchtime, I

1 just don't know.

2 THE COURT: That's fine. Again, either I'm going to
3 say I'm staying on this path, which will be quick, or I've
4 decided I'm letting Mr. Garrity out of the case, in which case
5 we need to do a whole bunch of different things, and we'll set
6 a timetable for doing that.

7 I expect I'm going to keep doing this, but Mr. Garrity
8 made some points that are causing me to think about this in a
9 little different light, and I just want to make sure I know
05:10PM 10 what I'm doing, and just so there's no mystery about it, I feel
11 a little bit boxed in here.

12 The client doesn't want -- I'm going to call them
13 factual defenses as shorthand -- the client doesn't want
14 certain factual defenses to be presented, the attorney thinks
15 that he needs to present those defenses to be effective or to
16 effectively defend the client.

17 Mr. Garrity is the third lawyer appointed. It seems
18 likely that a fourth or a fifth or sixth lawyer would take the
19 same position that his first three lawyers have taken. Since a
05:10PM 20 client can waive jury trial altogether and waive the right to
21 counsel altogether, it seems to me as a matter of logic that a
22 client could waive the right to have his attorney put on
23 certain factual defenses, again, using that as a shorthand, and
24 so I'm approaching it that way.

25 My concern is that if I simply let Mr. Garrity

1 withdraw, Mr. Belin will be worse off representing himself, if
2 we appoint a fourth attorney, we're likely to wind up right
3 back where we were. Mr. Belin wants to go to trial. We're
4 supposed to go to trial quickly, and I can't think of any other
5 clear way out of this problem.

6 MR. WORTMANN: Your Honor, obviously, whatever
7 happened in here was not for me, and I completely understand
8 that, but I would ask that -- I would look for some --

9 THE COURT: Even that is not clear to me to what
05:11PM 10 extent you can have access to that. It's under seal for now
11 and I'll deal with that at a later point.

12 MR. WORTMANN: Judge, I'm not asking you to give it to
13 me, but what I am asking is for some guidance on the motion in
14 limine, which I think is a very serious one.

15 THE COURT: I'm going to deny the motion in limine
16 because I don't think I can grant a government motion to
17 foreclose a defense. I think, you know, as a practical matter
18 we may wind up in the same place, but I'm going to deny the
19 motion in limine.

05:12PM 20 MR. WORTMANN: So it's clear, your Honor, and if I can
21 approach?

22 THE COURT: Yes.

23 MR. WORTMANN: And I'm handing you up a case, your
24 Honor, in which the First Circuit held that is entirely
25 appropriate for the Court to preclude cross-examination when

1 there's no good faith basis for the question to be asked. You
2 know, with respect to the issue of the plant, when I was in
3 Court and Mr. Belin was under oath, he said he wants to assert
4 that, and it didn't happen, and I don't know anything clearer
5 than if there's no evidence, if there's nothing to indicate
6 that the police officers planted this gun on Mr. Belin when he
7 specifically denied it under oath, I don't think that there's a
8 good faith basis for asking any questions suggesting that they
9 planted it, and if there's no evidentiary basis for it, there's
05:13PM 10 certainly no basis to argue it either in the opening or the
11 closing.

12 THE COURT: All right. The case you've handed me is
13 *U.S. vs. Ovalle-Marquez*, O-v-a-l-l-e-M-a-r-q-u-e-z,
14 36 F.3d 212 (1st Cir. 1994.) That may well be true,
15 Mr. Wortmann, and if so, it's another way of approaching what
16 may be the same or similar issue, but I am -- well, I'm going
17 to stand by my decision and deny the motion in limine.

18 MR. WORTMANN: Okay.

19 THE COURT: Let's see if there's any five-minute
05:14PM 20 window in which the two lawyers and I are all available
21 tomorrow. Other than from 10 to 11, I'm more or less free all
22 day. When are you going to be free?

23 MR. WORTMANN: Your Honor, I've got the 9:00, and then
24 I've got the 2:00, so if we could do it at 3:00.

25 THE COURT: We could squeeze it again. Mr. Garrity,

1 you're here at what time?

2 MR. GARRITY: Eleven.

3 THE COURT: And I'll let you appear by phone. Again,
4 this is going to be a quick decision, either, yes, I'm staying
5 on this path, or, no, I'm not. It's not going to be argument I
6 don't think because Mr. Belin would have to be here if it was
7 anything significant.

8 MR. GARRITY: And I don't want to inconvenience
9 Mr. Wortmann, but would the Court be available before nine?

05:14PM 10 THE COURT: Yes.

11 MR. WORTMANN: I've got to get the computer, I've got
12 to get set up in the hearing, your Honor. If it's not too much
13 to ask, I'm happy to do it on the phone at 3:00.

14 MR. GARRITY: By phone at 3:00 then.

15 THE COURT: Okay. 3:00. Obviously, you can be here
16 if you wish, but I'll let you appear by phone, and otherwise
17 what we're going to do, assuming that I don't make a different
18 decision, we will reconvene Monday morning for jury
19 impanelment.

05:15PM 20 MR. WORTMANN: Okay.

21 THE COURT: All right. Thank you.

22 THE CLERK: All rise.

23 (Whereupon, the hearing was adjourned at 5:15 p.m.)

24

25

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I do hereby certify that the foregoing transcript,
Pages 1 through 9 inclusive, was recorded by me
stenographically at the time and place aforesaid in Criminal
Action No. 13-10048-FDS, UNITED STATES OF AMERICA vs.
KING BELIN and thereafter by me reduced to typewriting and is a
true and accurate record of the proceedings.

Dated this 4th day of January, 2016.

s/s Valerie A. O'Hara

VALERIE A. O'HARA

OFFICIAL COURT REPORTER